

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**SECURITIES AND EXCHANGE
COMMISSION.**

2:07-CV-1057 JCM (LRL)

Plaintiff,

V.

EARTHLY MINERAL SOLUTIONS,
INC., et al..

Defendants

ORDER

Presently before the court is the case of *Securities and Exchange Commission v. Earthly Mineral Solutions, Inc. et al* (Case No. 2:07-cv-01057-JCM-LRL).

In the amended complaint (doc. #73), the Securities and Exchange Commission (hereinafter “SEC”) asserts four separate claims for relief against defendants Roy D. Higgs, Frank L. Schwartz, and Rick Lawton (hereinafter collectively “individual defendants”), as officers of Earthly Mineral Solutions Inc. and Natural Minerals Processing Company (hereinafter “corporate defendants”) for: (1) the unregistered offer and sale of securities in violations of sections 5(a) and (c) of the Securities Act of 1933 (“Securities Act”); (2) fraud in the offer or sale of securities in violation of section 17(a) of the Securities Act; (3) fraud in connection with the purchase or sale of securities in violations of section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and rule 10b-5 thereunder; and (4) violations of the broker-dealer registration provisions of section 15(a) of the Exchange Act.

27 On July 15, 2010, this court entered default against corporate defendants for failure to obtain

1 counsel pursuant to Federal Rules of Civil Procedure 16(f), 37(b)(2)(A), and 55(a). (Doc. #76).
2 Subsequently, individual defendant Frank L. Schwartz consented (doc. #85) to the entry of judgment
3 against him, and the court entered judgment accordingly (doc. #91). Upon SEC's motion for
4 summary judgment against the individual defendants (doc. #78), the court entered summary
5 judgment on plaintiff's second and third claims against individual defendants. (Doc. #97).

6 On September 24, 2010, the court granted the plaintiff's prayer for a permanent injunction
7 prohibiting future violations and for disgorgement in the amount of \$20 million, together with
8 prejudgment interest, against corporate defendants. (Doc. #98). The court denied, without prejudice,
9 the request for civil penalties, due to the court being provided with only an approximate number of
10 investors to calculate an award of civil penalties. *Id.* Subsequently, on January 1, 2011, defendant
11 Rick Lawton consented to entry of judgment (doc. #108), and the court entered judgment (doc. #117)
12 against him accordingly.

13 After granting plaintiff's motion to extend time to file dispositive motions (doc. #111),
14 plaintiff filed a motion for summary judgment against the only remaining defendant, Roy D. Higgs
15 (doc. #112). Prior to the court's decision, it entered an order setting trial for April 11, 2011. (Doc.
16 #119). Subsequently, the court granted the motion for summary judgment against defendant Higgs
17 (doc. #120) with regards to the disgorgement and permanent injunction, and denied the motion with
18 regards to the prayer for civil penalties. The court held that it was unable to determine the civil
19 penalties at this time due to the fact that the court was only provided with an estimated number of
20 investors to calculate the award.

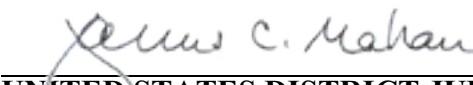
21 As there are no pending issues before this court, which is awaiting a proposed judgment with
22 the exact figures for the civil penalties, a trial is not warranted in this case.

23 Accordingly,

24 IT IS HEREBY ORDERED ADJUDGED AND DECREED that the calendar call set for
25 April 6, 2011, and the trial set for April 11, 2011, in *Securities and Exchange Commission v. Earthly*
26 *Mineral Solutions, Inc. et al* (Case No. 2:07-cv-01057-JCM-LRL) (doc. #119) be, and the same
27 hereby are, VACATED.

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1 IT IS FURTHER ORDERED that there be a status check hearing in the above captioned case
2 on April 28, 2011, at 10:00 a.m.

3 DATED April 5, 2011.
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7 **UNITED STATES DISTRICT JUDGE**
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